




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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/731,870	12/07/2000	Mark Joseph Hamzy	AUS9-2000-0656-US1	9794
45993	7590	12/06/2004		
IBM CORPORATION (RHF) C/O ROBERT H. FRANTZ P. O. BOX 23324 OKLAHOMA CITY, OK 73123				
EXAMINER ROBINSON BOYCE, AKIBA K				
ART UNIT		PAPER NUMBER		
3623				

DATE MAILED: 12/06/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/731,870	<b>Applicant(s)</b> HAMZY ET AL.	
	<b>Examiner</b> Akiba K Robinson-Boyce	<b>Art Unit</b> 3623	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) ☒ Responsive to communication(s) filed on 29 September 2004.

2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) ☒ Claim(s) 1-12 and 20-23 is/are pending in the application.

    4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.

6) ☒ Claim(s) 1-12 and 20-23 is/are rejected.

7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.

8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \* c) ☐ None of:  
         1. ☐ Certified copies of the priority documents have been received.  
         2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
         3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1) ☐ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
     Paper No(s)/Mail Date \_\_\_\_\_

4) ☐ Interview Summary (PTO-413)  
     Paper No(s)/Mail Date. \_\_\_\_\_

5) ☐ Notice of Informal Patent Application (PTO-152)

6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Status of Claims***

1. Due to communications filed 9/29/04, the following is a final office action. Claims 1, 9 and 20 are amended. Claims 13-19, and 24-30 are cancelled. Claims 1-12 and 20-23 are pending in this application and have been examined on the merits. Claims 1-12 and 20-23 are rejected as follows.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:  

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
3. Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 1, the phrase "such as" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1, 4, 5, 6, 8, 9, 12, 20, 23, are rejected under 35 U.S.C. 102(e) as being anticipated by Von Kohorn (US 6,443,840)

As per claims 1, 9, Von Kohorn discloses:

A method for conducting analysis of consumer reaction to marketing and advertising messages and campaigns, (Ab. Lines 1-2, [evaluating responses]/ A computer-readable medium containing program code for conducting analysis of consumer reaction to marketing and advertising messages and campaigns, (Col. 77, lines 50-58, [computer which provides a program to marketing and advertising messages and campaigns, (Col. 2, lines 25-28, [advertising program]), over computer networks such as the Internet, (Col. 138, lines 35-40, [communicating via the Internet], comprising the steps of:

transmitting a selected advertising message...for presentation to a consumer user/receiving an advertising message for presentation to a consumer user/transmitting to a client device via a computer network an advertising message for presentation to a consumer user, (Col. 2, line 54, [transmission of broadcast program], col. 138, lines 35-40, [where communication of the television transmission is via the Internet]), said advertising message including at least one electronic data item selected from the group of a web object, a graphic image file, an audio recording file, and a video segment file,

(Col. 138, lines 35-40, [where communication via the internet and internet web site represents the communication of web objects and graphic image files], Col. 17, lines 44-47, [shows the incorporation of a radio/television transmitter];

automatically recording at least one consumer user reaction at a predetermined delay from the time of presentation of said selected advertising message without requiring action from said consumer user/automatically recording at least one consumer user reaction at a predetermined delay from the time of presentation of said selected advertising message, (Col. 28, lines 26-35, [response entering devices made inoperative for a predetermined delay]); and

transmitting said recorded consumer user reactions to a marketing server from said client device via a computer network, (Col. 121, lines 47-52, [elicited consumer reactions forming a marketing database to provide information and leads for advertising, promotions and direct mailings]).

The following is inherent with Von Kohorn since his invention is implemented over the Internet as shown in col. 138, lines 37-44, and in an Internet environment the internet server is necessary in order to provide information to the internet user:

from a server computer to a client device

In this case, the Internet environment is the server computer and the audience station is the client device

As per claims 4, 12, 23, Von Kohorn discloses:

wherein said set of recording/wherein said program code for recording at least one consumer user reaction comprises capturing an audible recording from a

microphone associated with said client device, (col. 10, lines 21-25, [audio recorder], w/ Col. 110, lines 6-12 and lines 47-53, col. 8, lines 5-8, [responses communicated to the central station via telephone link from each electronic hub], [usage of telephone hub to score responses], w/ 64, lines 15-31, [using a microphone to speak to the callers]).

As per claim 5, Von Kohorn discloses:

automatically analyzing/program code for automatically analyzing said captured audible recordings for indications of favorable, disfavorable, and indifferent reactions to said advertising message, (Col. 38, lines 39-51, [acceptable responses], col. 52, lines 49-50, [unacceptable], [where indifferent reactions are inherent with Von Kohorn since acceptable and unacceptable reactions are already determined and indifferent reactions is a reaction in between acceptable and unacceptable]).

As per claim 6, Von Kohorn discloses:

Collecting/program code for collecting transmitted recorded consumer user reactions for a plurality of consumer users for further analysis on a group or statistical basis, (Col. 24, lines 53-61, [statistical analysis]).

As per claim 8, Von Kohorn discloses:

Selecting/program code for selecting additional advertising messages for transmission to a consumer user based upon a consumer user's preferences and a consumer user's historical reaction to previous advertising messages, (Col. 61, lines 53-59, [history, preferences]).

As per claim 20, Von Kohorn discloses:

A system for conducting analysis of consumer reaction to marketing and advertising messages and campaigns, (Ab. Lines 1-2, [evaluating responses], to advertising messages and campaigns, (Col. 2, lines 25-28, [advertising program]), via a computer network, (Col. 138, lines 35-40, [communicating via the Internet], the system comprising:

a receiver disposed in said client device for receiving advertising messages from a server, (col. 12, lines 37-40, [central station represents the server and the means for observing advertises messages through the broadcast program], also col. 138, lines 37-44, shows the transmission of a televised program via the internet, here the receiver is the respondent's web site technology at the audience station);

an advertising message presenter disposed in said client device for presenting an advertising message to consumer user, (Col. 12, line 42, [means for observing], also col. 138, lines 42-48, [response unit]);

a consumer user reaction recorder disposed in said client device, operable on a pre-determined delay from a time of presentation of said received advertising message, (Col. 3, lines 11-12 and lines 26-38, [recording device, timing circuitry], Col. 28, lines 26-35, [response entering devices made inoperative for a predetermined delay]), and

a reaction transmitter disposed in said client device for sending said recorded consumer user reactions to a marketing server via a computer network, (Col. 138, lines 45-48, shows communication link communicates responses to an evaluation unit).

The following is inherent with Von Kohorn since his invention is implemented over the Internet as shown in col. 138, lines 37-44, and in an Internet environment the internet server is necessary in order to provide information to the internet user:

Delivered from a server computer to a client device

In this case, the Internet environment is the server computer and the audience station is the client device.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 2, 3, 7, 10, 11, 21, 22, are rejected under 35 U.S.C. 103(a) as being unpatentable over Von Kohorn (6,443,840) as applied to claim 1 above, and further in view of Dowling (US 6,548,967).

As per claims 2, 10, 21, Von Kohorn fails to disclose capturing/program code for capturing a visual image of a consumer user's face from an electronic camera associated with said client device, but does disclose that response units are equipped with video means in col. 10, lines 6-12.

However, Dowling discloses:



Capturing/program code for capturing a visual image of a consumer user's face from an electronic camera associated with said client device, (Col. 10, lines 37-47, [facial expressions]). Dowling discloses this limitation in an analogous art for the purpose of gauging the customer's interest in and reaction to an advertisement.

It would have been obvious to one of ordinary skill at the time of the applicant's invention to capture a visual image of a consumer user's face from an electronic camera associated with said client device with the motivation of analyzing a facial expression to determine the customer's reaction to an advertisement.

As per claims 3, 11, 22, Von Kohorn fails to disclose automatically analyzing/program code for automatically analyzing said captured visual images for indications of favorable, disfavorable, and indifferent reactions to said advertising message, but does disclose that response units are equipped with video means in col. 10, lines 6-12.

However, Dowling discloses:

automatically analyzing/program code for automatically analyzing said captured visual images for indications of favorable, disfavorable, and indifferent reactions to said advertising message, (Col. 10, lines 51-55, [analyzing to find the most engaging, effective, advertisement])). Dowling discloses this limitation in an analogous art for the purpose of determining which advertisement would be the most engaging and effective advertisement to show a user.

It would have been obvious to one of ordinary skill at the time of the applicant's invention to automatically analyze said captured visual images for indications of

favorable, disfavorable, and indifferent reactions to said advertising message with the motivation of analyzing a facial expression to determine the result of a customer's reaction to an advertisement).

As per claim 7, Von Kohorn fails to disclose the step of collecting transmitted recorded consumer user reactions for a single consumer user during a thread of browsing advertisement for further analysis of a consumer user's reaction to a series of advertisements or presentations, but does disclose recording consumer user reactions in col. 3, lines 26-38.

However, Dowling discloses:

collecting transmitted recorded consumer user reactions for a single consumer user during a thread of browsing advertisement for further analysis of a consumer user's reaction to a series of advertisements or presentations, (Col. 13, line 65-Col. 14, line 3, [browser interface]). Dowling discloses this limitation in an analogous art for the purpose of presenting a data collection device that will help monitor consumer actions and reactions.

It would have been obvious to one of ordinary skill at the time of the applicant's invention to collect transmitted recorded consumer user reactions for a single consumer user during a thread of browsing advertisement for further analysis of a consumer user's reaction to a series of advertisements or presentations with the motivation of determining how a user reacts to advertisements as a result of browsing.

***Response to Arguments***

8. Applicant's arguments with respect to claims 1-12 and 20-23 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Akiba K Robinson-Boyce whose telephone number is 703-305-1340. The examiner can normally be reached on Monday-Tuesday 8:30am-5pm, and Wednesday, 8:30 am-12:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz can be reached on 703-305-9643. The fax phone numbers for the organization where this application or proceeding is assigned are 703-746-7238 [After final communications, labeled "Box AF"], 703-746-7239 [Official Communications], and 703-746-7150 [Informal/Draft Communications, labeled "PROPOSED" or "DRAFT"].

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-3900.



A. R. B.

November 30, 2004



TARIQ R. HAFIZ  
SUPERVISORY PATENT EXAMINER  
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